

Assembly Bill No. 2082

CHAPTER 247

An act to add Sections 6224.3, 6224.4, and 6224.5 to the Public Resources Code, relating to public lands.

[Approved by Governor September 7, 2012. Filed with
Secretary of State September 7, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2082, Atkins. Public lands: State Lands Commission: violations.

Existing law establishes the State Lands Commission in the Natural Resources Agency. Under existing law, the commission classifies state land for its different possible uses and has jurisdiction over various state lands.

This bill would prohibit a person from constructing, placing, maintaining, owning, using, or possessing a structure or facility on land that is under the commission's jurisdiction and owned by the state, without first obtaining all necessary easements, leases, or permits from the commission that authorize the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility, except for specified facilities owned by an electrical corporation, as defined, or a gas corporation, as defined.

This bill would establish a civil penalty for a violation of that provision. A person who violates that provision would either be liable for a penalty of not more than \$1,000 a day or an amount that is not more than 60% higher than the full fair market rental for each month that a violation occurs, as specified. The bill would state criteria for determining the appropriate penalty. The bill would exempt a telegraph or telephone corporation undertaking specified action and a franchised cable television corporation, limited to their usage of poles, conduits, cables, wires, and associated appurtenances under either their ownership or the ownership of an electrical corporation, from that penalty.

The bill, among other things, also would establish procedures to enjoin such activity, remove a violating structure or facility, serve notice of any violation, and conduct an administrative hearing on the violation, as prescribed.

The bill would exempt certain persons from the bill's prohibitions and would authorize the commission to adopt regulations to carry out its provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6224.3 is added to the Public Resources Code, to read:

6224.3. (a) A person shall not construct, place, maintain, own, use, or possess a structure or facility on land that is under the commission's jurisdiction and that is owned by the state without first obtaining all necessary easements, leases, or permits from the commission that authorize the construction, placement, maintenance, ownership, use, or possession of the structure or facility.

(b) Except as provided in subdivisions (a), (b), and (c) of Section 6224.5, and except for facilities owned by an electrical corporation, as defined in Section 218 of the Public Utilities Code or a gas corporation as defined in Section 222 of the Public Utilities Code, that were installed on lands pursuant to a property interest or a claim of right before the lands became state lands, a person, other than a telegraph or telephone corporation acting pursuant to Section 7901 of the Public Utilities Code or a franchised cable television corporation, as defined in Section 216.4 of the Public Utilities Code, and limited to their usage of poles, conduits, cables, wires, and associated appurtenances under either their ownership or the ownership of an electrical corporation, who violates subdivision (a) shall be liable for a penalty of not more than one thousand dollars (\$1,000) a day or an amount that is not more than 60 percent higher than the full fair market rental for each month that a violation occurs. If the violation occurs during only part of a calendar month, the commission may prorate the penalty.

(c) In determining the appropriate penalty described in subdivision (b), the commission shall consider all of the following factors:

(1) The physical extent of the violation on the land under the commission's jurisdiction, and that is owned by the state.

(2) The degree of culpability of the violator.

(3) The degree of cooperation of the violator and whether the structure or facility is susceptible to removal or the violation is susceptible to resolution.

(4) Any prior history of violations of statutes or leases pertaining to lands under the commission's jurisdiction, and that are owned by the state, including the past history of the violator in taking all feasible steps or procedures necessary or appropriate to correct a violation.

(5) The extent to which the violation causes environmental harm or impairs lawful public access to lands under the commission's jurisdiction, and that are owned by the state.

(6) Any factor determined by the commission to be relevant to a fair and just result, and in the best interest of the state.

(d) The penalty described in this section shall be imposed from the first day the commission issues an order to the day when the violation is cured.

(e) The commission may enjoin a person who violates subdivision (a) from continuing that violation.

(f) The commission may require a person who violates subdivision (a) to remove the structure or facility from lands that are owned by the state at the person's own expense. If the violator refuses to remove the structure or facility, or if the violator cannot be located, the commission may, at its own expense, remove the structure or facility from the land under the

commission's jurisdiction, and that is owned by the state. The commission may pursue whatever legal remedies are available to recover the removal costs from the violator.

(g) For the purposes of this section, a structure or facility shall include, but is not limited to, buildings, boat houses, docks, piers, revetments, fill, pilings, pipelines, groins, jetties, seawalls, breakwaters, and bulkheads.

(h) If the Attorney General prevails in a civil action necessary to enforce an order of the commission issued pursuant to this section, the Attorney General shall be awarded attorney's fees and costs.

(i) The remedies provided by this section are in addition to and not in lieu of any other penalty or sanction provided by law.

SEC. 2. Section 6224.4 is added to the Public Resources Code, to read:

6224.4. (a) Before the commission considers whether to pursue a remedy provided under Section 6224.3, the commission shall first provide a written notice to the person against whom the commission seeks to impose the penalty. The notice shall include an opportunity for a hearing before the commission at a properly noticed public meeting. The commission shall send the notice not less than 30 days before the date set for conducting a hearing pursuant to this section. A notice shall include all of the following:

(1) The date, time, and location of the commission hearing where the person may appear and be heard.

(2) A statement of the authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes and rules involved.

(4) A short and plain statement of the matters asserted or charged, including a description of the violation complained of with reasonable certainty as to its character and location.

(5) A statement indicating whether and under what circumstances an order by default may be entered.

(b) In lieu of personal service, service of notice may be made by registered mail and by posting a copy of the notice on the structure or facility that is in violation of subdivision (a) of Section 6224.3.

(c) If the person fails to appear at the noticed hearing, the commission may issue an order.

(d) A hearing shall be scheduled as a regular calendar item at a properly noticed commission meeting. A commission member shall serve as a presiding officer at a hearing held pursuant to this section and conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, including Article 10 (commencing with Section 11445.10) of that chapter.

(e) A person against whom the commission has issued an order imposing a remedy provided in Section 6224.3 may seek review of the order pursuant to Section 1094.5 of the Code of Civil Procedure by filing a petition for writ of mandate within 60 days after the commission's action has become final.

SEC. 3. Section 6224.5 is added to the Public Resources Code, to read:

6224.5. (a) If, as of January 1, 2013, a person is in violation of subdivision (a) of Section 6224.3, that person shall not be subject to a penalty pursuant to that section, if the person, on or before July 1, 2013, remedies the violation or submits to the commission a completed lease application, including the payment of all fees and costs. The remedy may include, but is not limited to, entering into an appropriate lease with the commission or adequately removing the structure or facility.

(b) A person shall not be subject to a penalty or order pursuant to Section 6224.3, if the person submits a notice to the commission that a structure or facility owned by that person is potentially in violation of subdivision (a) of Section 6224.3 and the person, within six months from the date the notice is received by the commission, remedies the violation or submits to the commission a completed lease application, including the payment of all fees and costs. This subdivision shall apply only if the potential violator submits a notice to the commission before the commission otherwise receives notice or information regarding the potential violation, or takes action against the violator.

(c) If any pole, conduit, cable, wire, pipeline, or associated appurtenance that is owned by an electrical corporation, as defined in Section 218 of the Public Utilities Code or a gas corporation, as defined in Section 222 of the Public Utilities Code, violates subdivision (a) of Section 6224.3, and the electrical or gas corporation can demonstrate that it has not received actual notice that it does not have adequate existing land rights for its structure or facility located on land under the commission's jurisdiction, the electrical or gas corporation shall not be subject to a penalty or order pursuant to Section 6224.3 if the electrical or gas corporation remedies the violation or submits to the commission a completed lease application, including the payment of all fees and costs, or files with a court of competent jurisdiction a motion to perfect a prescriptive easement within six months from the date the violation is reported or the mistake is discovered.

(d) The commission may adopt regulations necessary or useful to carry out this section and Sections 6224.3 and 6224.4.